Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1994

THOMAS J. DILLON,

Petitioner,

v.

STATE OF TENNESSEE,

Respondent.

Petition For A Writ Of Certiorari From The Tennessee Supreme Court

PETITION FOR WRIT OF CERTIORARI

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28 pp

QUESTIONS PRESENTED FOR REVIEW

I. WHETHER THE FOURTH AMENDMENT AND *LEON* PERMIT AN APPELLANT COURT TO APPLY THE "GOOD FAITH" EXCEPTION TO A SEARCH WARRANT WITHOUT FIRST REVIEWING THE AFFIDAVIT FOR PROBABLE CAUSE.

IF SO, SHOULD SUCH A HOLDING BE REVERSED BECAUSE IT IS UNWORKABLE AND CIRCUMVENTS THE FOURTH AMENDMENT?

II. WHETHER THE TENNESSEE COURT OF CRIMINAL APPEALS COULD OR SHOULD APPLY *LEON* WITHOUT THERE HAVING BEEN FIRST A *LEON* HEARING IN THE TRIAL COURT WITH THE BURDEN OF PROOF ON THE PROSECUTION TO ESTABLISH A "GOOD FAITH" EXCEPTION.

III. WHETHER THE TENNESSEE COURT OF CRIMINAL APPEALS CREATED NEW LAW UNDER THE FOURTH AMENDMENT BY EXPANDING THE RULE IN *GATES* TO PRESUME THE VERACITY OF A CONFIDENTIAL INFORMANT WITH NO INDEPENDENT POLICE CORROBORATION.

LIST OF ALL PARTIES TO THE PROCEEDING

The following is a list of all parties to the proceeding in the Tennessee Supreme Court, whose judgment is sought to be reviewed in this case:

The State of Tennessee

Thomas J. Dillon

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OPINIONS BELOW

The order of the trial court in State of Tennessee v. Thomas J. Dillon, No. 37597, granting the petitioner's motion to dismiss indictment is unpublished, and is reproduced in the Appendix at 9a. The opinion of the Court of Criminal Appeals, State of Tennessee v. Thomas J. Dillon, No. 03C01-9304-00124, is unpublished, and is reproduced in the Appendix at 1a. The order of the Tennessee Supreme Court denying permission to appeal is unpublished and reproduced in the Appendix at 13a.

SUPREME COURT JURISDICTION

The judgment of the Supreme Court for the State of Tennessee was filed on April 10, 1995. This Petition for Writ of Certiorari is filed pursuant to 28 U.S.C. Section 1257(a).

CONSTITUTIONAL PROVISION CONSTRUED

Fourth Amendment to the United States Constitution:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

The Petitioner, hereinafter referred to as the Defendant, was indicted by the Knox County Grand Jury for the offense of first degree murder and felony murder on June 21, 1989. On January 28, 1991, the Defendant filed a pre-trial motion to suppress the evidence seized pursuant to a search warrant, specifically the alleged murder weapon, from his safe deposit box at the First National Security Center in Sarasota, Florida. (R. 14-17). A hearing on the motion to suppress was held on February 8 and 11, 1991. (T. 1-40). After careful consideration of the evidence presented, the Honorable Ray L. Jenkins, Judge of the Knox County Criminal Court, suppressed all evidence

seized from the Defendant's safe deposit box, holding that the affidavit for the search warrant of the Defendant's safe deposit box was lacking in probable cause to believe that a weapon was present in the safe deposit box. (R. 2-21, 23-24; T. 28-31, 40).

Pursuant to Rule 9(b) of the Tennessee Rules of Appellate Procedure, the Respondent, hereinafter referred to as the State, appeal the trial court ruling. (R. 23-27). The Court of Criminal Appeals reversed the trial court's order granting the Defendant's Motion to Suppress, and remanded the case to the trial court. The Defendant filed for permission to appeal to the Supreme Court of Tennessee which was granted; however, the Supreme Court remanded the case to the trial court to review the sufficiency of the search warrant under federal law in view of the opinion rendered in *State v. Mollica*, 554 A.2d 1315 (N.J. 1989); *State v. Dillon*, 844 S.W.2d 139 (Tenn. 1992). The Supreme Court declined to hear the Defendant's Petition to Rehear.

Pursuant to the instructions of the Supreme Court, a hearing was held on January 29, 1993 (T. 41-49). The trial court once again suppressed the evidence seized from the Defendant's safe deposit box, finding that the hearsay portions of the affidavit in support of the search warrant lacked specificity as to basis of knowledge and believability and that the affidavit as a whole lacked probable cause. (R. 29-32).

The State again sought review on interlocutory appeal by permission. On April 6, 1993, the trial court

issued an order granting the State's appeal by permission, and staying the proceedings in the trial court pending a resolution in the appellate courts. (T. 33-35). The Court of Criminal Appeals granted the State's application for permission to appeal on April 27, 1993. (R. 36-37).

The Court of Criminal Appeals reversed the trial court on September 9, 1994 holding that it was not necessary under federal law to do a probable cause determination of the affidavit in support of the search warrant but that the court could apply a *Leon* analysis finding a "good faith" exception without determining probable cause. *U.S. v. Leon*, 468 U.S. 897, 82 L.Ed 2d 677, 104 S.Ct. 3405 (7/5/84). On November 7, 1994, the Court of Criminal Appeals denied the Defendant's petition to rehear. On November 14, 1994, Chief Justice Riley Anderson granted the Defendant's motion for extension allowing him until January 7, 1995 to file his Application for Permission to Appeal. The Application for Permission to Appeal was denied on April 10, 1995.

SUMMARY OF ARGUMENT

The Tennessee Court of Criminal Appeals erred in holding that *Leon* permits an appellate court to apply a "good faith" exception to a search warrant where that court does not first examine the affidavit for probable cause. Justice White's dicta in *Leon* is not the rule of the court, and if it was, such a rule should be reversed because it circumvents the Fourth Amendment and is totally unworkable.

Further, the Court of Criminal Appeals should not have applied a *Leon* "good faith" exception without the

trial court first having conducted a *Leon* hearing with the burden of proof on the prosecution to establish such a "good faith" exception.

Finally, the Tennessee Court of Criminal Appeals has created new law under the Fourth Amendment by expanding the rule in *Gates* to presume the veracity of a confidential informant when there is no independent police corroboration of his account.

ARGUMENT

The Tennessee Court of Criminal Appeals created federal law that simply does not exist in the United States nor in the Sixth Circuit. The Court of Criminal Appeals relies on Justice White's concurring opinion in *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed 2d 527 (1983) which the Defendant submits is dicta and has certainly never been expressed in any other opinion by any other justice of the United States Supreme Court. The cases cited by the Court of Criminal Appeals, *United States v. Edwards*, 798 F.2d 686, 690 (4th Cir. 1986) and *United States v. Maggitt*, 778 F.2d 1019, 1033 (5th Cir. 1985) have not been adopted by the Sixth Circuit. In addition, the District Court in *Edwards* conducted a *Leon* hearing which is not present in this case and will be discussed more fully under the second issue presented for review.

The dicta of Justice White in *Gates* stating that it is not always necessary to conduct a probable cause determination before applying a *Leon* analysis is simply not workable. Even Justice White states:

> Indeed it may be difficult to determine whether the officers acted reasonably until the Fourth Amendment issue is resolved. *Gates* at 264-265.

He also writes that:

> In other circumstances, however, a suppression motion poses no Fourth Amendment question of broad import . . . *Gates* at 264-265.

The Defendant contends that it is logically impossible for a court to conduct a *Leon* analysis until the Fourth Amendment issue has been resolved on whether probable cause exists in the affidavit. To logically analyze an affidavit in support of a search warrant under *Gates,* the court must first determine if probable cause exists under the Fourth Amendment. If it does not, the government can then demand a *Leon* hearing. No such demand was ever made in this case and there is no record for the appellate courts of this state to review any *Leon* analysis.

Under *United States v. Leon,* 468 U.S. 897, 82 L.Ed 2d 677, 104 S.Ct 3405 (7/5/84), the burden of proof is on the prosecution to establish objective good faith, at 82 L.Ed 2d 699. See also *United States v. Gant,* 759 F.2d 484, 487 (1985).

The prosecution must then show that the judge was not misled by information in the affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth. Secondly the prosecution must show that the magistrate had not wholly abandoned his judicial role. Third, the prosecution must prove that no objective well-trained police officer could rely on the warrant because it was so lacking in indicia of probable cause as to render official belief in its existence

entirely unreasonable. And last, the prosecution must prove the warrant is not so facially deficient that the executing officers could not reasonably presume it to be valid. It is only if the prosecution manages to meet its burden in showing that none of those four situations exists, can it reasonably claim that the officers were acting in good faith under *Leon*.

If such a hearing was held with a record fully developed for appellant review, then the appellate courts can review those issues *de novo*. *United States v. Bowling*, 900 F.2d 926 (6th Cir. 1990); *United States v. Maggitt*, 778 F.2d 1029, 1033-35 (5th Cir. 1985), *cert. denied*, 476 U.S. 1184, 106 S.Ct 2920, 91 L.Ed 2d 548 (1986); *United States v. Sager*, 743 F.2d 1261, 1265 (8th Cir. 1984), *cert. denied*, 469 U.S. 1217, 105 S.Ct. 1196, 84 L.Ed 2d 341 (1985); *United States v. Hendricks*, 743 F.2d 653, 656 (9th Cir. 1984), *cert. denied*, 470 U.S. 1006, 105 S.Ct. 1362, L.Ed 2d 382 (1985). Without any record in the trial court showing that the prosecution met its burden of proof in establishing the "good faith" exception to *Leon*, there is no record upon which the Court of Criminal Appeals could find *Leon* "good faith."

Last and certainly not least, the Defendant would submit that this case is one of broad import because the Court of Criminal Appeals has expanded *Gates* to allow an affidavit to stand where there is absolutely no corroboration showing the veracity of a confidential informant. *Gates* simply does not abandon the *Aguilar-Spinelli* analysis of the veracity of a confidential informant. In *Gates*, there was substantial independent police corroboration of the tip from the anonymous informant.

In this case, there is absolutely nothing in the affidavit which shows any independent police corroboration of anything alleged by the confidential informant as to the gun which would support his veracity. In addition, there is no information to show the informant had ever provided reliable information in the past. Without the information in the affidavit, there is no probable cause. On page 6 of the affidavit in support of the search warrant, information concerning a confidential source indicates that a confidential source on July 7, 1987 said that in March of 1986 the Defendant fired a .22 caliber pistol into the crawl space beneath his house. The only attempt at any corroboration states that a search was made of the crawl space beneath the confidential source's house and four spent .22 caliber cartridge casings were recovered. There is absolutely nothing in the affidavit which states the cartridge casings were recovered by an independent police investigation. For all we know in the affidavit, the cartridge casings were recovered by the confidential informant himself. He simply cannot supply corroboration of his own veracity.

Additionally, the magistrate cannot assume vital information necessary for the corroboration. More than the affiant's conclusory allegation is required to satisfy a showing of probable cause through a neutral and attached judgment by the issuing magistrate. The Supreme Court in *Gates* simply did not envision permitting affidavits in support of search warrants to stand where there is absolutely no independent police corroboration of the veracity of a confidential informant as we have had in the instant case.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be granted.

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APPENDIX

APPENDIX 1

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE AT KNOXVILLE

FEBRUARY 1994 SESSION

STATE OF TENNESSEE	**C.C.A. #03C01-9304-CR-00124**
APPELLANT,	
V.	**KNOX COUNTY**
THOMAS DILLON	**HON. RAY L. JENKINS**
APPELLEE.	**(RULE 9 APPEAL)**
	(Filed Sep. 19, 1994)

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OPINION FILED: SEP 19 1994
REVERSED AND REMANDED
JUDGE JOHN P. COLTON, JR.

OPINION

This case arises as a result of the death of Richard Keith Nolley from gunshot wounds, for which the defendant, Thomas Dillon, is charged with murder.

The case came to us initially by way of an interlocutory appeal by the State, which seeks to reverse the trial court's order suppressing evidence. We find that the judgment of the trial court should be reversed.

The trial judge suppressed evidence seized as a result of a search of a safety deposit box in Sarasota, Florida. The box contained a .22 caliber pistol with silencer and clip, along with credit cards and pictures belonging to the victim of the murder. The trial judge found that the affidavit for the search warrant did not show sufficient probable cause to believe that the murder weapon would be found in the safety deposit box.

Pursuant to Rule 9(b) of the Tennessee Rules of Appellate Procedure, the State appealed the trial court's ruling. This Court applied Tennessee law and reversed the trial court's order granting the defendant's motion to suppress. The case was remanded to the trial court. The defendant filed for permission to appeal to the Supreme Court of Tennessee which was granted. The Supreme Court remanded the case to the trial court to review the sufficiency of the search warrant in view of the Court's adoption of the rule announced in *State v. Mollica*, 554 A.2d 1315 (N.J. 1989); *State v. Dillon*, 844 S.W.2d 139

(Tenn. 1992).[1] The Supreme Court denied the defendant's Petition to Rehear in an order filed on December 21, 1992.

On January 29, 1993, the trial court held a hearing pursuant to the Supreme Court's opinion. The trial court once again suppressed the evidence, finding that under either Tennessee or federal law the affidavit in support of the search warrant lacked specificity as to basis of knowledge and believability. The trial court also found that the warrant was based on an affidavit so lacking in probable cause as to make belief in it unreasonable; therefore, the warrant could not be upheld by *United State* [sic] *v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984). The State sought an interlocutory appeal by permission. On April 6, 1993, the trial court issued an order granting the appeal by permission. The trial court also stayed the proceeding pending a resolution of matters on appeal. This Court granted the State's application for permission to appeal on April 27, 1993.

I.

The Appellant, the State of Tennessee, contends that the affidavit in question satisfies the "totality of circumstances" test set forth in *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct.2317, 76 L.Ed.2d 527 (1983). In addition, the Appellant argues that even if the affidavit did not meet the

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[1] *State v. Dillon*, 844 S.W.2d 139 (Tenn. 1992) ("state law does not govern the federal officers with respect to evidence they seize, provided they acted pursuant to federal authority and consistent with federal law, and provided further they acted independently of state officials." (quoting *State v. Mollica*, 554 A.2d 1315 (N.J. 1989)).

Gates test for probable cause, the evidence should nonetheless be allowed into evidence under the "good faith" exception to the exclusionary rule as found in *United States v. Leon*, 468 U.S. 897 (1984).

Pursuant to the Tennessee Supreme Court's decision in *State v. Dillon*, 844 S.W.2d 139 (Tenn. 1992), we will apply federal law to determine the sufficiency of the search warrant.

Accordingly, our analysis begins with the landmark case of *Illinois v. Gates*, 462 U.S. 213 (1983). In *Gates*, the United States Supreme Court established the "totality of the circumstances" test to be applied by magistrates and judges in determining whether probable cause to issue a warrant exists:

> The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. *Id.* at 238.

If the magistrate's finding of probable cause is challenged, the reviewing court should pay great deference to the magistrate's decision, and should not disturb this decision so long as the magistrate had a "substantial basis for . . . conclud [ing] that a search would uncover evidence of wrongdoing. . . . " *Id.* at 236.

On remand, the trial court found that the search warrant affidavit was not only insufficient under Tennessee law, but also failed to meet the federal test of *Gates*.

The Appellant argues that the trial court erred in finding the affidavit insufficient under either Tennessee or federal law since this Court has previously held[2] that the affidavit was sufficient to show probable cause under the stricter Tennessee standard found in *State v. Jacumin*, 778 S.W.2d 430, 437 (Tenn. 1989). However, we find it unnecessary to resolve the question concerning the warrant's sufficiency under *Gates* given our determination that the circumstances surrounding the case at bar satisfy the "good faith" requirements of *Leon*.

A determination that probable cause is lacking is not always necessary before addressing the "good faith" exception under *Leon*. *United States v. Edwards*, 798 F.2d 686, 690 n.2 (4th Cir. 1986) (citing *United States v. Maggitt*, 778 F.2d 1019, 1033 (5th Cir. 1985)). This Court finds direction in Justice White's concurring opinion in *Gates*, in which he stated considerations that reviewing courts should take into account in deciding the objective good faith issue without addressing the question of whether a fourth amendment violation has occurred:

> When a Fourth Amendment case presents a novel question of law whose resolution is necessary to guide future action by law enforcement officers and magistrates, there is sufficient reason for the Court to decide the violation issue before turning to the good faith question. Indeed, it may be difficult to determine whether the officers acted reasonably until the Fourth Amendment issue is resolved. In other circumstances, however, a suppression motion poses

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[2] *State v. Dillon*, No. 03C01-9103-CR-0091, slip op. at 9 (Tenn.Crim.App. Oct. 10, 1991).

> no Fourth Amendment question of broad import – the issue is simply whether the facts in a given case amounted to probable cause – in these cases, it would be prudent for a reviewing court to immediately turn to the question of whether the officers acted in good faith. Upon finding that they had, there would generally be no need to consider the probable cause question.

Gates, 462 U.S. at 264-65 (White, J., concurring in the judgment).

We find that the case at bar does not raise a question of "broad import." The fourth amendment issue is merely whether the facts set forth in the affidavit rise to the level of probable cause. Therefore, it is appropriate to turn to the issue of the law enforcement officer's objective good faith reliance on the warrant.[3]

II.

In *United States v. Leon*, 468 U.S. 897 (1984), the Supreme Court created the "good faith" exception to the exclusionary rule. This exception allows evidence to be admitted if it is obtained by law enforcement officials acting in objectively reasonable reliance on a search warrant issued by a detached and neutral magistrate, even if

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[3] Appellee, citing *United States v. Cancela*, 812 F.2d 1340 (11th Cir. 1987), argues that it would be inappropriate for this Court to consider the *Leon* question because the state has not provided the trial court with an opportunity to consider this question. *Cancela* does not provide support for this argument. Futhermore [sic], our review of the record indicates that the trial court not only had an opportunity to consider the *Leon* question, but ruled that *Leon* could not uphold this warrant.

the affidavit on which the warrant was based was insufficient to establish probable cause. *Id.* at 920. However, the exception will not apply when, *inter alia,* the warrant affidavit is "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *Id.* at 923.

Appellee contends that the affiant had to know and a reasonably well trained officer would have known, that he was presenting an affidavit that he could not justify; therefore, the affidavit was so lacking in indicia of probable cause as to render the affiant's belief in its existence entirely unreasonable.

We disagree. As we have previously stated in our initial opinion, the affidavit filed in application for the search warrant contained numerous averments, which were developed during an extensive investigation of the defendant. After a review of the affiant's investigation and subsequent averments,[4] we are not convinced that the affidavit in question was so lacking in indicia of probable cause as to render official belief in it entirely unreasonable. Under the circumstances presented, we will not charge agent Broome with the responsibility of evaluating the affidavit for probable cause, when judges themselves cannot agree on this issue. *Leon* makes it clear that it is objectively reasonable for an officer to rely on a warrant where there is evidence sufficient to create disagreement among thoughtful and competent judges as to the existence of probable cause. *Leon,* 468 U.S. at 926.

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[4] See *State v. Dillon,* No. 03C01-9103-CR-0091, slip op. at 6-9 (Tenn.Crim.App. Oct. 10, 1991).

Accordingly, we find that agent Broome was justified in relying upon the search warrant issued by U.S. Magistrate Thomas Wilson. *Leon,* therefore, precludes suppression of the evidence seized when the warrant was executed.

In consideration of the foregoing, the order of the trial court granting the defendant's motion to suppress is reversed, and the case is remanded to the trial court for further proceedings.

/s/ John P. Colton, Jr.
JOHN P. COLTON, JR.,
SPECIAL JUDGE

CONCUR:

/s/ Jerry Scott
JERRY SCOTT, PRESIDING JUDGE

/s/ David H. Wells
DAVID H. WELLS, JUDGE

APPENDIX 2

IN THE CRIMINAL COURT, DIVISION II
FOR KNOX COUNTY, TENNESSEE

STATE OF TENNESSEE	)	
	)	
vs.	)	No. 37597
THOMAS DILLON	)	
Defendant	)	
	)	

ORDER

This matter is before this Court on remand from the Supreme Court of the State of Tennessee for consideration by this Trial Court of the sufficiency of the affidavit for a search warrant. This court previously held the affidavit to be insufficient to present the Magistrate with probable cause for the issuance of a search warrant and suppressed the search. The Supreme Court has specifically asked for an examination of the search warrant in view of that Court's adoption of the *Mollica rule* (see *State v. Mollica*, 554 A.2d 1315 (N.J. 1989).

The Court of Criminal Appeals was of the opinion that the affidavit should be examined under State law i.e. Aguilar-Spinelli (*State v. Jacumin* 778 S.W.2d 430 (Tenn. 1989); however, the Supreme Court felt that federal law applied (*State v. Gates*, 76 L.Ed.2d 529, 103 S. Ct. 2317).

The Trial Court originally held the affidavit for the search warrant to be insufficient under either the state or federal standard. (See transcript pp. 28, 29). Somehow this has been overlooked in the appellate process. At any

rate, this Court is of the opinion that certain portions of the affidavit are of significance.

Hearsay statements of certain anonymous sources are quoted as follows:

Affidavit p. 3 – Dickie approached a "reliable source"

p. 3 – Stevens spoke with "source"

p. 3-4- "source" called "reliable"

p. 6 – a "source" called "confidential"

(These conclusory statements claiming reliability are not proper standing alone) *U.S. v. Mayes,* 552 F.2d 729.

In none of these references to a "reliable" or "confidential source" is the magistrate given information concerning the reliability of the informant or the means by which the informant came to any information relevant to this inquiry. This is not sufficient under either Tennessee or federal law. These hearsay statements of informants are integral portions of the web the federal agent attempts to weave into "probable cause".

The volume of incidental peripheral information presented to bolster the affidavit is impressive but fails upon close analysis to produce probable cause.

As an example of this loose amalgam of fact and imagination, it is noted that the closest time linkage of the defendant with the sought weapon was 15 months (Aff. p. 6, paragraph 17).

The warrant was based on an affidavit so lacking in probable cause as to make belief in it unreasonable. It

cannot thus be recussitated [sic] by *U.S. v. Leon*, 468 U.S. 897, 104 Sct. 3405.

This court is admonished to consider *Mollica, Supra.* If the trial court is correct in its analysis, then *Mollica* need not be considered. However, in compliance with the remand, this trial court is of the opinion that *Mollica* is inapplicable, (at this point under the proof). Although there appears to be a high degree of cooperation between the federal and state officers, the Court cannot hold under the present proof that an agency relationship existed so as to impute the actions of one agency to another.

The affidavit ends with the statements that the affiant "has probable cause," believes he has "probable cause" (Affidavit p. 11), and "has probable cause to believe" the lockbox to contain property. Again, such conclusory statements cannot supply probable cause.

The *post hoc* success of the search cannot justify the lack of probable cause in the affidavit (*State v. Shaw*, 603 S.W.2d 741).

Perhaps the main element that has been overlooked in the affidavit is the fact that the assertion of the presence of the sought property never at any point rises higher than it "might be" in the lockbox. This could have been said about the earlier search of the defendant's house (in which nothing was found). The sought gun *might* have been anywhere; however, the necessary element for a search warrant is probability. The requirement for a proper search warrant just does not exist in this case.

For the above reasons, this trial court reaffirms its earlier holding suppressing the search and order the suppression of the fruits of the search.

The Clerk will forward a copy of this Order to the attorney for the defendant, the District Attorney General and the State Attorney General and Reporter.

ENTER this 26th day of March, 1993.

/s/ Ray L. Jenkins
RAY L. JENKINS, JUDGE
SIXTH JUDICIAL DISTRICT
DIVISION II

CERTIFIED TRUE COPY
MARTHA PHILLIPS, CLERK
CRIMINAL COURT
KNOX COUNTY, TN

BY /s/ M Davis
DEPUTY CLERK

APPENDIX 3

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

STATE OF TENNESSEE,	)	
Appellee,	)	No. 03C01-9304-CR-00124
	)	Knox Criminal
v.	)	
THOMAS DILLON,	)	(Filed Apr. 10, 1995)
	)	
Appellant.	)	

ORDER

Upon consideration of the application for permission to appeal and the entire record in this cause, the Court is of the opinion the application should be denied.

PER CURIAM